

# Court of Appeals, State of Michigan

## ORDER

People of MI v Scott Edward Hensley

Docket No. 352173

LC No. 07-035886-FH

Karen M. Fort Hood  
Presiding Judge

Christopher M. Murray

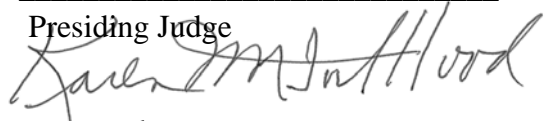
Cynthia Diane Stephens  
Judges

Pursuant to MCR 7.205(E)(2), in lieu of granting the delayed application, the Court orders that the circuit court's order denying defendant's motion for relief from judgment is VACATED IN PART. The trial court erred by rejecting defendant's claims arising from Terry Pierce's affidavit solely because the affidavit represents a recantation of Pierce's trial testimony. While recantation evidence is generally viewed with suspicion, the trial court cannot reject the affidavit without taking into consideration any other relevant factors. Rather, the trial court must determine whether a reasonable juror could find Pierce credible by evaluating "all relevant factors tending to either bolster or diminish the veracity of the witness's testimony." *People v Johnson*, 502 Mich 541, 566-568, 578-579; 918 NW2d 676 (2018). The matter is thus remanded for reconsideration of defendant's claims that arise from Pierce's affidavit. On remand, the trial court shall hold an evidentiary hearing to evaluate whether a rational juror could find Pierce credible, and if so, whether this new evidence makes a different result probable on retrial. *Id.* at 566-579.

To the extent the delayed application raises a claim concerning jury instructions, the application is DISMISSED. With respect to this claim, defendant has failed to demonstrate the entitlement to an application of any of the exceptions to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment. MCR 6.502(G).

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Presiding Judge



Murray, C. J., would deny the delayed application for leave to appeal.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 10, 2020

Date



Chief Clerk